

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

BERKELEY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2023100681

EXPEDITED DECISION

NOVEMBER 30, 2023

On October 20, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request, called a complaint, from Berkeley Unified School District naming Parents on behalf of Student as respondents. Part of the due process hearing request involved an expedited issue. Administrative Law Judge Penelope Pahl heard the expedited portion of this matter via videoconference on November 14, 15, and 16, 2023. Lenore Silverman and Aisha Sleiman represented Berkeley. Kristen Hardy, a Berkeley Special Education Program Supervisor, attended all hearing days on Berkeley's behalf. Parents, who were self-represented, attended all hearing days on Student's behalf.

On November 16, 2023, the hearing concluded. The parties requested the opportunity to submit written closing briefs which was granted. The parties were allowed until November 21, 2023, at 3:00 PM, to submit their briefs, both of which were timely received.

ISSUE:

Is maintaining Student's current placement at Berkeley High School's Home Base Program substantially likely to result in injury to Student or others, such that Berkeley can remove Student to an interim alternative educational setting, specifically Rising Star SPED Academy, for not more than 45 school days?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 *et seq.*; 34 C.F.R. § 300.1 (2006) *et seq.*; Ed. Code, § 56000 *et seq.*; Cal. Code Regs., tit. 5, § 3000 *et seq.*) The discipline of special education students and the procedures related to expedited hearings are governed by United States Code, title 20, section 1415(k), and Code of Federal Regulations, title 34 part 300.530, *et seq.*

The party requesting the hearing bears the burden of proof by a preponderance of the evidence, and is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast*

(2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L. Ed. 2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii.) Berkeley filed the complaint, and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 18 years old and in the twelfth grade at the time of this hearing. Parents are his conservators. Student resided within the Berkeley's geographic boundaries at all relevant times. Student is eligible for special education under the categories of autism and intellectual disability.

STUDENT'S CONDUCT IN THE BERKELEY HOMEBASE PROGRAM

Berkeley asserts that Student cannot be safely educated in the Homebase program environment at Berkeley High School. Berkeley contends that several incidents between August and October of 2023 resulted in injuries to staff, other students, and to Student, himself. Berkeley further asserts that, despite modifications to Student's behavior intervention program, and changed approaches to implementing that program, Berkeley has not been able to keep staff, other students, and Student safe when Student's behaviors escalate.

Student argues that the behavior intervention plan has not been modified and the right approach to working with Student has not been found. Student further contends he should be maintained in the Homebase program in a separate space while other approaches are tried, and more data is taken.

A school district may file a request for an expedited due process hearing to allow it to assign Student to an interim, alternative educational setting for up to 45 days on

the grounds that maintaining the current placement of Student at Berkeley High School is substantially likely to result in injury to the child or others. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a).) School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. (20 U.S.C. 1415(k)(1); 34 C.F.R. § 300.530(a).) The hearing officer considering the issues in the expedited hearing may order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the student or to others. (34 C.F.R. 300.532(b)(2)(ii).)

Berkeley High School is a large, comprehensive, urban high school campus with over 3,200 students. Its campus covers a full city block in Berkeley. The Homebase program is located in the center of the campus and is not closed off from the rest of the campus. It is comprised of three classrooms of different sizes, one with kitchen facilities for cooking instruction. The hallways outside the Homebase program and the outdoor areas of campus are crowded and noisy at various times during the day, particularly when students change classes and have lunch. Due to the size of the campus, students sometimes cut through the Homebase classrooms as a shortcut to move between connected building.

EXTENDED SCHOOL YEAR – MID JUNE 2023 TO MID JULY 2023

Student is an 18-year-old young man who had been homeschooled for several years prior to moving to California. Student began attending classes at Berkeley High School during the summer of 2023's extended school year program. Student attended the Homebase program for the extended school year. The extended school year

Homebase program teachers were the same teachers who co-taught the class during the regular school year. Erica Hernandez and Josh Austin, both Education Specialists, switched off teaching the roughly four weeks of the 2023 summer extended school year program. The summer Homebase program was more relaxed and smaller than the regular school year program. The program lasted only half a day. Student attended 210 minutes per day to accommodate his sleep disorder. More art projects were used to teach the curriculum. No community outings took place.

The placement in the extended school year classroom was considered a diagnostic placement in Student's May 8, 2023 IEP. Parents wanted Student in a program, close to home, where he could interact with peers. Student had been homeschooled for several years prior to returning to a classroom in Berkeley High School's Homebase program. Based on observations of Student in his home program, Berkeley determined Student had significant, verbal, and non-verbal communication and social skills delays that adversely affected his educational performance. He had little capacity for self-direction. When Student started attending the Homebase program, he was reliant on adult support to initiate and complete tasks, control his feelings when he didn't get his way, and to avoid significant frustration when faced with a non-preferred request.

Student did not have a behavior intervention plan when he started attending the extended school year Homebase program. Due to his longstanding homeschool experience, Berkeley staff believed they needed to work with Student in the classroom to observe how he would interact with other students and teachers and gather information to be able to develop a behavior plan. The aide who had been working with Student while he was homeschooled accompanied him to the extended school year program.

Hernandez' first injury from Student occurred on the third day of the extended school year program, in June of 2023. Student had a behavior of self-stimulating by putting his hand down his pants to touch his genitals, and then immediately touching another person's face. Student approached Hernandez and began to touch himself. Hernandez moved the position of her face to avoid being touched. However, Student anticipated her reaction and slapped her face.

Staff had been working on replacing the self-touching behavior with having Student's hands squeezed by another person. After slapping her, he held out his hands and asked her to squeeze. Student is approximately 5.9 feet tall and described as strong and fast by Berkeley High School faculty and staff members who worked with him in the classroom.

Following this incident, Hernandez worked with Andrea Jensen, a Board Certified Behavior Analyst, employed by Berkeley Unified School District, to try to modify Student's behaviors. They took photos of Student squeezing his own hands to encourage the stimulation, or self-comfort, to be self-generated. When he asked for a squeeze, they showed him the picture and showed him how to squeeze his own hands. Staff also collaborated with Mother and arranged for Student to wear a belt to class to impede his ability to put his hands down his pants. However, the belt resulted in only limited deterrence to Student's self-stimulation. Hernandez moved her body away from Student when he approached her. She described the four-week extended school year program as being too short to achieve significant behavior modification.

A behavior intervention plan was recommended at the 30-day review of Student's attendance at the extended school year program. This IEP took place on July 11, 2023. A behavior intervention plan was proposed based on observations and experiences that occurred during the extended school year program.

Three types of problem behaviors had been identified, as reported by the teacher, Student's aide, and his occupational therapist.

1. Physical escalations, including grabbing clothes, grabbing throats, hair pulling, face slapping, and kicking. These behaviors had been identified as occurring up to six times per day during the 210-minute extended school year sessions.
2. Inappropriate self-stimulation, described as putting his hand down his pants and touching his private area. This occurred up to 20 times per day during the 210-minute sessions.
3. Self-harming behavior, described as biting his own hand when he was denied the opportunity to touch himself or engage in other preferred activities. This was also seen to occur up to 20 times per day during the 210-minute sessions.

Parents did not consent to the behavior intervention plan proposed at the July 11, 2023 IEP team meeting as a starting point for behavior modification and formal data gathering. Nor did Parents' consent to the proposed behavior plan at any time prior to the beginning of the 2023-2024 school year.

REGULAR SCHOOL YEAR – AUGUST 16, 2023 TO OCTOBER 4, 2023

Student began attending the regular Homebase program beginning August 16, 2023, for a reduced school day. Parent had concerns about Student's transition to the full-day Homebase program. Student has difficulty sleeping. Therefore, to accommodate his sleep schedule, and the need to ease him into a full-day program, the IEP team agreed Student would attend school from 9:00 a.m. to 1:25 p.m. each day, which was when the fourth of six daily class periods ended.

The Homebase program is an inclusive program that prepares high school students for transitional adult programs. Students in the Homebase program take two general education courses daily, usually Physical Education and an elective. Student's participation in the class routines was substantially limited, due both to his inability to control his aggressive behaviors and his intolerance of delayed gratification or denial of something he wanted.

In the first seven weeks of school, Student's behaviors continually escalated. He injured four staff members, resulting in three aides leaving the program, and one of the co-teachers of the class having a reduced work schedule. Hernandez described Student's classroom behaviors as steadily increasing from the first day of school. Student bit his own hand when he was denied something he wanted or the opportunity to self-stimulate. Student also continued to grab onto people and pulled on their clothes, particularly around the collars of their shirts.

Student was drawn to Hernandez, often positioning himself directly in front of her face. Hernandez was working with Monica Knapp, another of Berkeley's Board Certified Behavior Analysts, regarding approaches to modifying Student's behaviors. Student had been referred to Knapp's caseload prior to the beginning of the 2023-2024 school year, based on observations of behaviors that occurred during the extended school year.

On August 18, 2023, the third day of the school year, following a transition from one classroom to another so Hernandez could show a film, Student became dysregulated. Student's escalated behaviors were often triggered by transitions from one activity to another. Initially, Hernandez had to follow Student into another of the Homebase classrooms to redirect him to the room where the class was gathering. Student came into the classroom and stood next to Hernandez at the projector. Student asked Hernandez for a "squeeze." Hernandez was trying to squeeze Student's hand and set up the projector at the same time. Student suddenly pressed his body up against her body. Hernandez quickly moved away, at which time Student took the hand Hernandez had been squeezing and put it down his pants. Hernandez quickly took his hand out of his pants and told him the behavior was inappropriate at school. He repeatedly put his hand in his pants three more times. Each time she removed his hand and told him it was inappropriate at school. The fourth time Hernandez attempted to redirect Student away from the self-stimulating behavior, Student grabbed at Hernandez' shirt and started pulling at her dress. She began struggling with Student to stop his grabbing.

Hernandez' past experiences of escalations involving Student grabbing at her clothes, were limited and short; but this time Student would not stop. Student pulled at Hernandez physically and pulled at her clothes. Hernandez tried to move Student

towards the back of the class rather than in front where all of the other students were sitting and focused. She told the aides to remove the other students from the room.

Student's behaviors continued to escalate. Student tried to put his hands up Hernandez' dress. One of Student's aides, Skylar Rodgers, helped Hernandez. Two paraprofessional aides, Anietra Montgomery and Sharon Cooke also came in to help. Rodgers took Student's hand that was not latched onto Hernandez' shirt and helped Hernandez take off her glasses. Student, who Hernandez described as strong, began grabbing at Hernandez' face. Hernandez was able to quickly remove her earrings. Hernandez described feeling as though she was fighting him off.

Hernandez continued to try to remove Student's hand from her shirt. Student started pulling at Hernandez' hair and kicking. He tried to bite at Hernandez' face and hand as Hernandez tried to pry his hand from her shirt. Student kicked Montgomery as she attempted to help. He also tried to kick Emily Jimenez, another Registered Behavior Technician, who was trying to deescalate him with soothing words. Hernandez was able to move his leg so he could not continue kicking. Jimenez called security. The paraprofessionals unlocked the food cabinet and started feeding Student chips, a favorite food, to distract him. He slowly released Hernandez' shirt. The struggle lasted approximately 30 minutes. Special Education Program Manager, Roberta Krietz, a vice principal, and Security personnel came into the room as the episode was ending.

Hernandez had difficulty describing this incident during her testimony. She started, but quickly became too emotional to speak. She had to take a break before being able to proceed. When she returned, her demeanor throughout her testimony was extremely anxious and sad. Hernandez said that, after this experience, she became

scared of Student. When the incident was over, Hernandez' shirt was ripped, and the collar of her dress was stretched. Krietz and the assistant vice principal arranged for a substitute and sent Hernandez home for the day.

Student focused increased attention on Hernandez following the August 18, 2023 incident. When Student saw her, he would run towards her. She would immediately remove any earrings she had on because she was unsure when, or how, he would be triggered. Student's behaviors were not limited to Hernandez. Student also continued to grab the clothes of fellow students, especially their collars. Another student in the class wanted to intervene when Student escalated, so that student had to be removed from the vicinity of any of Student's escalations. Hernandez characterized the classroom as a hostile work and learning environment. Incidents were occurring daily. Major incidents were separately reported. Other behaviors were noted as the staff kept track of Student's behavior in class.

Another 30-day IEP team review was convened on September 13, 2023, to discuss Student's behavior intervention plan, and the increasing physical aggression being seen by the Berkeley IEP team members. Parents were reminded that neither formal data collection, nor implementation of the behavior plan could take place without Parents' consent to the behavior plan. Berkeley IEP team members modified the July 2023 proposed behavior plan, based on the additional information from observing Student's conduct in the Homebase classroom over the roughly four weeks since the new school year began. The updated plan was presented to Parents who signed it a few days after the IEP team meeting.

Incidents involving other Students as well as staff continued in September and October. Student had one fellow Homebase student who triggered Student's behaviors and became a target of Student's dysregulation. Incidents involving this student increased in frequency and intensity. Student grabbed this fellow student's food, particularly chips the student brought in for his snacks. Student also grabbed his collar or physically grabbed the student.

Student also targeted the behavior staff assigned to work with him. Student's staffing steadily increased from one-to-one support to two-to-one support. Eventually the Homebase team agreed that Student generally required three-to-one supervision which often involved the inclusion of one of the classroom teachers. Sometimes several additional staff were required to keep Student's behavioral aide staff, or fellow students, safe from Student's aggression. In addition to the August 18, 2023 incident, Behavior Emergency Reports were issued on September 21, 2023, and September 22, 2023. Two incidents each day resulted in Behavior Emergency Reports on October 2, and 4, 2023.

Emily Jimenez asked to be assigned to a different program, following the behavior incident on September 22, 2023. On this occasion, staff believed the incident was triggered by Student not having his usual spoon to eat his lunch. It had not been sent to school. He was offered a wooden fork instead. Student threw his iPad, tipped over a chair, threw his lunch on the floor, and put his hand down his pants. Teacher, Josh Austin ran into the room to help, and prompted Student to "squeeze hands." Jimenez and Jesus Ayala moved furniture out of Student's way to limit the items Student could throw. Student tore a poster off the wall and put his hand down his pants for several minutes. He then squeezed his hands together.

Ayala offered him the choice of a book or a walk. Student chose a book, so Ayala read to him, then took him for a walk outside. While outside, they came in contact with the fellow student who was often Student's target. Student grabbed the other student's hands. Their aides tried to separate them at which point Student attempted to bite the other student. They were separated shortly thereafter.

On October 2, 2023, at approximately noon, Student very suddenly jumped up from his desk and ran to Hernandez. Student wrapped his hands around her head and grabbed her throat with the other one. Student's aide, Ayala, immediately followed to assist Hernandez, and helped hold Student's wrists. Hernandez grabbed the hand on her throat and pried Student's fingers off her. She estimates it took about a minute. She cannot recall if it impacted her ability to breathe. She recalls being fueled by adrenaline, very scared, and being focused on getting Student's hands off her throat. Ayala was eventually able to redirect Student to another room.

Approximately an hour later, Student was outside hoping to use a bike. It was being used by another student. Student saw Hernandez also outside and again ran up to her trying to grab her neck. Hernandez was able to block the action and Ayala prevented Student from touching Hernandez. Student was suspended for a day following these incidents.

Hernandez took two weeks off after the October 2, 2023 incidents, and has not returned to work full time since. She is still receiving mental health care and is involved in a work associated stress therapy program. Board Certified Behavior Analyst Monica Knapp recalls Hernandez being emotionally unable to speak with her following this incident. Knapp said that had never happened in the four years they had worked together.

Approaches to modifying Student's behavior were revised and refined frequently during the first seven weeks of school. However, seven weeks is not a lot of time to work with a now adult Student, who had not been in a classroom since elementary school, and who has not had the behavior expectations of working in a group. As a result, Student was reacting to an unfamiliar environment with many triggers he was not used to encountering. Student had negative reactions to crowds and loud noises. He was unable to tolerate any delayed gratification and frequently grew violent when he did not get what he wanted immediately. Student was unable to focus on a lesson for more than five minutes at a time.

The comparison between the proposed behavior plan of July 11, 2023, and the behavior plan proposed on September 13, 2023, shows the updated details, particularly those regarding the response to problems, suggested in Student's updated behavior intervention plan. These were documented during the first four weeks of the Homebase program, again, a relatively short period of time, significant for the escalation of aggressive behaviors. In addition to the listed problem behavior responses, reflected on the updated behavior plan, other adjustments to Student's routines were tried.

Student's lunch times were adjusted more than once, so he was not eating with everyone else and had adequate supervision while he ate. Food was a huge trigger for Student. He would grab other people's food and become aggressive. He hit staff multiple times if his food desires were not met immediately. Instead of eating lunch with peers, he was removed to a separate space with two aides to eat his lunch.

Student was removed from the class for a walk because he was unable to control his behavior during the "Coffee Cart" activity. During one of the daily breaks on campus, the Homebase classroom was open to anyone on campus. The class sold

snacks and drinks as a class fundraiser, which is part of the Homebase curriculum. The snacks included chips, which Student could not resist taking from others. When people objected, he would become aggressive. Because Student was unable to adequately control his behavior, Student was removed from the classroom during the Coffee Cart period and taken on a long walk.

Hernandez described repeated efforts to work with Student, from the time he came to the extended school year program to the day she left on October 2, 2023. She described giving him separate spaces to decompress, despite the limited space available to the other students to do so. She described prioritizing Student's needs over the rest of the class with no success in impacting his behaviors. Other students approached Hernandez expressing fear about coming to school. She received calls from Parents who were concerned about their children's safety. Ultimately, Hernandez did not believe Student could be safely taught in the Homebase program.

Following his one-day suspension on October 2, 2023, Student returned to the Homebase class on October 4, 2023. During third period, approximately 90 minutes after arriving in the classroom, Student began standing up from the couch and making loud vocalizations. Ayala took Student for a walk, and then Student chose a book that Ayala read to him. Following those activities, Student suddenly got up and slapped Ayala in the face. Student then grabbed Ayala's shirt, stretching the collar. Another staff member assisted in removing Student to a separate space where it took 25 minutes and two people to deescalate Student.

After this incident, during fourth period, Ayala took his lunch break. Ayala had been asked to change his lunch break more than once in the past few weeks to accommodate adjustments to Student's schedule. While Ayala was on lunch, another

staff member, Heber, took Student outside. Student began to hit Heber and pull on his shirt. The class was evacuated to another room and one of the teachers ran out to assist Heber.

While outside, Student spotted the fellow student he targeted. He ran over and started to hit him. In the process of hitting the student, he also hit the student's mother. Heber ran to ask Ayala to come back early from lunch. Ayala quickly returned and attempted to turn Student's attention to the adapted bike or the track for a walk. Student would not be redirected. Instead, Student charged Ayala, grabbed his shirt collar, and tried to grab Ayala's neck. Ayala was able to block the grab for his neck by holding Student's hands and calling for assistance. Student pulled Ayala towards him, and bit Ayala's hand, at one point lifting Ayala off the ground with one arm.

Another Registered Behavior Technician arrived, who worked with Ayala to put Student in a two-person standing crisis prevention hold. However, when transitioning to the hold, Student bit Ayala's head. It took 20 minutes in the crisis hold to deescalate Student to a point he could safely be redirected to another activity. Four staff members had to participate in the hold at different times. Student was ultimately redirected to the bike. He was maintained outside the classroom under the supervision of multiple staff members until his Parent picked him up at 1:30 p.m.

Ayala resigned from working with the Homebase program that day. Skylar Rodgers also resigned following that incident. Both Ayala and Rogers worked for Speech Pathology Group, or SPG, which is an organization that provides specially trained behavior aides. Following the October 4, 2023 incident, SPG informed Monica Knapp that they were unwilling to provide staff to work with Student due to the injuries.

The evidence clearly established that Student had no tolerance for having to wait for gratification, for being denied requests, or for being required to do non-preferred activities. Requiring Student to do something he did not want to do was likely to lead to behaviors resulting in Student either harming himself or harming others. Due to Student's limited ability to work within the classroom routine, even with redirection, Student only minimally participated in the Homebase program during the seven weeks of school from August 16, 2023, to October 4, 2023. He was often isolated to avoid physical escalations, or to be deescalated. He was offered more preferred activities to avoid the potential for self-harm, physical aggression towards others in the classroom or property damage, resulting in limited time spent devoted to academic goals. He caused multiple injuries to several staff members ultimately resulting in the program losing staff or, in the case of Hernandez, being required to offer a reduced schedule due to injuries. Despite adjustments to behavior modification approaches, Student's physical escalations increased.

Parents did not dispute that the reported emergency incidents occurred. Mother acknowledged Student tended to put his hands on her neck and pull on her shirt to get her attention at home. However, Mother denied that Student was aggressive at home. She described a very gentle touch on her neck or tug on her clothing to get her attention. Mother also acknowledged that Student put his hands down his pants at home, a behavior Mother reports began when he was four years old to calm himself before going into the water when learning to swim. Mother denied that the action was sexual when it started. Mother described being able to easily redirect student from the conduct at home. However, when such conduct continues in public at nearly 19 years old, it is likely to be interpreted differently, at least by those who do not know Student.

That Student's self-stimulating behaviors were coupled with or followed by violence when they occurred in conjunction with interactions towards Hernandez demonstrates a need for focused behavior modification related to this conduct.

Parents believe that Staff did not make an adequate effort to use Student's communication device or other preferred distractions to manage his behaviors. Parents offered no evidence that Berkeley failed to make efforts to communicate with Student using his alternative augmentative communication device. Hernandez described efforts to communicate with Student using the device when he was becoming dysregulated. The efforts often ended with Student throwing the device. More importantly, the goal is not solely to distract Student from engaging in aggressive, harmful behaviors. The goal is to have Student replace the harmful behaviors with acceptable responses to stress disappointment, or anxiety; and, ultimately, to give Student the opportunity to learn to delay gratification and develop tolerance for completing non-preferred tasks so he is able to benefit from academic and life skill instruction.

Parents' expectation that staff and fellow students will continue to be exposed to the possibility of being hurt, while data is recorded on additional undefined variations to a behavior plan is unrealistic. Student's inability to tolerate delayed gratification of any kind without devolving to violence; and his limited ability to engage in non-preferred activities for a period long enough to complete a lesson without becoming aggressive, results in Student's inability to access his education in the Homebase program safely. Berkeley has met its burden of establishing that Student cannot be maintained in the Berkeley High School Homebase program as there is a substantial likelihood of harm to Student himself, or to fellow students and Berkeley staff members if he stayed.

RISING STAR SPED ACADEMY'S ADEQUACY AS AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

A child with a disability who is removed from the child's current placement to an interim, alternative educational setting must continue to receive:

- educational services, to enable the child to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and,
- as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur. (20 U.S.C. § 1415(k)(1)(D)(i) and (ii); 34 C.F.R. § 300.530(d)(1)(i) and (ii) (2006).)

Student's inability to control impulsive, often dangerous behavior, when frustrated, anxious or upset is grounds to place Student in an interim, alternative educational setting. Initially, this placement will be for a period of up to 45 days. (34 C.F.R. 300.352.(a) and (b) (1) and (2).) After the initial 45-day placement, Berkeley can make additional requests to extend the interim placement, or the IEP team could also decide the interim placement, or another placement meeting Student's needs, should become Student's permanent placement. (34 C.F.R. 300.352 (c).)

The evidence established that Rising Star SPED Academy provides an environment that allows Student the benefit of specialist behavior training with separate, designated, de-escalation facilities and the opportunity to remain in school despite dysregulation. The program is able to implement the specialized academic instruction and related services in Student's most recently consented to IEP.

Rising Star SPED Academy is a California Certified Non-Public school. A nonpublic school is a private, nonsectarian school that is certified by the California Department of Education, called CDE. (Ed. Code, §§ 56034, 56366.1.) A nonpublic school must meet state standards to be certified by the CDE. (Ed. Code, § 56034.)

Rising Star offers a campus with approximately 50 total students, and small class sizes. There are two designated decompression rooms and fewer people outside, resulting in fewer potential triggers during the day, and more options for Student to manage dysregulation. The teachers are certified education specialists, and the aides are trained in applied behavior analysis or ABA. Student's home program has been ABA based, so this approach will be familiar to him.

Rising Star will focus on helping Student adjust to working in a classroom routine with peers while controlling aggressive behaviors and learning delayed gratification. This will help Student prepare for an adult transition program. At nearly 19 years old, Student has only a few more years of special education eligibility available. His prior limited peer interaction, and lack of a classroom placement with routines and expectations, resulted in limited opportunities to practice social skills with peers and unfamiliar people. Rising Star has the staffing to allow Student to be removed from the classroom temporarily to work on learning to calm himself, when necessary, and then return to the classroom. Allowing Student to escape classroom expectations with displays of physical aggression, self-harm or self-stimulation is counterproductive. It allows Student to learn to evade the non-preferred requirements of the classroom by using maladaptive behaviors rather than learn that there are expectations of him if he is to participate in a group. Rising Star staff would work to keep Student at school after a dysregulation event.

Rising Star's specialized staff and facilities would allow Student access to the precursor skills necessary to progress to training in the life skills, and community interactions, Parents want for Student. Student is unable to participate in any group life skills training if he is unable to wait for his turn, or ignore the fact that another student is engaged in a more preferred activity while Student is required to complete a non-preferred task.

Parents objected to Rising Star on the grounds that it is further away from their home than Berkeley or some other schools such as A Better Chance; and transportation would be physically difficult for Parent. Transportation is a related service to which Student would be entitled when attending an interim, alternative educational setting. (34 C.F.R. § 300.34(a).) Rising Star is able to provide transportation. Student could be accompanied in a van to school with a transportation aide, and a driver trained to transport disabled students. The transportation aide would work for Rising Star, so the person would be familiar to Student.

Parents also objected to Rising Star on the grounds that it cannot provide the speech services and other related services in Student's IEP. Parents offered no proof that Rising Star is unable to provide Student's speech, occupational therapy, or other services. The evidence established that Rising Star has one full-time speech pathologist and two speech pathology assistants on staff. Rising Star also has two full-time occupational therapists on staff. Rising Star assured Kristen Hardy, one of Berkeley's special education supervisors, that they were able to implement Student's currently offered two hours of speech weekly and 45 minutes weekly of occupational therapy. Rising Star also has the

facilities and staff to implement Student's three hours weekly of assistive technology services. Student would begin at Rising Star with two-to-one aide services throughout his school day, supplemented with 90 minutes of behavior analyst supervision per week.

Parents are concerned about a lack of laundry and kitchen facilities at Rising Star to allow Student to pursue independent life skills, and about the lack of regular community outings. Parents point to the transition plan, in Student's IEP, which identifies those skills as transition goals. Parents argue that, without these facilities, Rising Star cannot implement all of Student's goals.

Parents prefer the school, A Better Chance, or ABC School, because it is closer to their home, offers laundry and kitchen facilities and has a swimming program. Student likes to swim. Berkeley investigated possible placement for Student at ABC school in December of 2022. ABC did not have an opening for Student. In early 2023, Rising Star SPED Academy opened. The programs are similar; however, Rising Star's environment is quieter. One of Student's clear triggers is noise. Rising Star is on a self-contained campus. ABC is located in a business park.

Berkeley asserts that minimizing Student's known triggers will help him be able to focus on controlling his behaviors, and working on his other goals, including, speech, pre-academics, his occupational therapy needs, and more sophisticated use of his communication devices. Only after Student's behaviors are under control will he be able to manage a group class routine involving life skills and community outings.

Student's life skills are transitional goals he is to work to complete prior to completing his special education eligibility. These transitional goals are tied to his attainment of his IEP goals, particularly the behavior goals. Due to his aggressive and

often harmful behaviors, Student was frequently unable to participate in regular classroom activities involving just his classmates, much less activities involving the wider school community, such as the Coffee Cart at Berkeley High School. He was never considered safe to attend an outing off the Berkeley campus. Rising Star SPED Academy is able to provide the focused work on Student's behavior goals and implement his other IEP goals during this interim placement. Parent's argument that Rising Star SPED Academy is unable to implement all of Student's IEP goals is not persuasive.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

As to the sole issue in this case, it is determined that, maintaining Student's current placement at Berkeley High School's Homebase Program is substantially likely to result in injury to Student or others, such that Berkeley can remove Student to an interim alternative educational setting, specifically Rising Star SPED Academy, for not more than 45 school days. Berkeley prevailed on this issue.

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ORDER

1. Berkeley may place Student at Rising Star SPED Academy in Hayward, California, a California certified non-public school for not more than 45 school days.
2. The 45-school day period will begin on Student's first day of attendance at Rising Star SPED Academy.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings